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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/664,480

09/17/2003

Vincent Ardizzone

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EXAMINER

SMITH, RUTH S

ART UNIT

PAPER NUMBER

3737

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/664,480

Applicant(s)

ARDIZZONE, VINCENT

Examiner

Ruth S. Smith

Art Unit

3737

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>9/17/03</u> . | 6) <input type="checkbox"/> Other: ____. |

Specification

The disclosure is objected to because of the following informalities: applicant should update the status of the continuing data. On page 14, the description of the zones is incorrect, for example zone 12 is considered to be adjacent to zone 12a. Therefore a north polarity zone is adjacent to a north polarity zone. The specification appears to state that a north polarity zone is only adjacent to south polarity zones. Appropriate correction is required.

Claim Objections

Claims 2-3,5,8,9,14,15,20,21 are objected to because of the following informalities: In claims 2-3, "said north magnetic zone" lacks antecedent basis. It is unclear as to whether this refers to all north polarity zones. It is unclear as to how claim 5 further limits the structure set forth in claim 4. In claims 8,9, "said south magnetic zone" lacks antecedent basis. It is unclear as to whether this refers to all south polarity zones. In claims 14-15, "said north magnetic zone" lacks antecedent basis. It is unclear as to whether this refers to all north polarity zones. In claims 20,21, "said south magnetic zone" lacks antecedent basis. It is unclear as to whether this refers to all south polarity zones. Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 1-25 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1,7,13,19,25 are vague and indefinite in that it is unclear as to how the zones of north polarity and south polarity can alternate both horizontally and vertically across the flexible pad if there is one zone of north polarity and a plurality of zones of south polarity or one zone of south polarity and a plurality of zones of north polarity. It appears that for such a limitation to occur, there would have to be a plurality of both north and south polarity zones. Claim 1 is vague and indefinite in that the claim initially sets forth that there is at least one zone of north polarity and at least three magnetic zones of south polarity, the claim then sets forth that there are a

plurality of zones of north and south polarity. Claim 7 is vague and indefinite in that the claim initially sets forth that there is at least one zone of south polarity and at least three magnetic zones of north polarity, the claim then sets forth that there are a plurality of zones of north and south polarity. Claim 13 is vague and indefinite in that the claim initially sets forth that there is at least one zone of north polarity and at least four magnetic zones of south polarity, the claim then sets forth that there are a plurality of zones of north and south polarity zones. Claim 19 is vague and indefinite in that the claim initially sets forth that there is at least one zone of south polarity and at least four magnetic zones of north polarity, the claim then sets forth that there are a plurality of zones of north and south polarity. Claim 25 includes the same indefinite claim language referred to above regarding claims 1,7,13,19. Furthermore, the language set forth in claim 25 is confusing. It is unclear as to what disclosed configuration includes the limitations as set forth in claim 25.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baermann ('532) in view of Kitagishi et al (GB 2196855). Baermann discloses all of the claimed structure except for the zones alternating in polarity horizontally and vertically. Kitagishi et al (GB 2196855) discloses a magnetic therapeutic device in which it is desirable to have the north and south poles alternate horizontally and vertically to obtain a superior therapeutic effect. Therefore, it would have been obvious to one of ordinary skill in the art to have modified Baermann such that an alternating horizontal and vertical arrangement of the magnets is used to obtain a superior therapeutic effect as taught by Kitagishi et al (GB 2196855). It should be noted that both Baermann and Kitagishi et al (GB 2196855) disclose the shape of the zones to be

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triangular or having four sides. In the absence of any showing of unexpected results the specific type of triangular shape or four-sided shape used would have been an obvious design choice of known equivalents in the art.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 5,277,692. Although the conflicting claims are not identical, they are not patentably distinct from each other because in order for one to provide the limitation set forth in claim 1 of the patent, the zones must be arranged in the manner set forth in the present claims. Furthermore, a change in size and shape is an obvious matter of design choice.

Claims 1-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 5,871,438. Although the conflicting claims are not identical, they are not patentably distinct from each other because in order for one to provide the limitation set

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forth in claims 1,5 of the patent, the zones must be arranged in the manner set forth in the present claims. Furthermore, a change in size and shape is an obvious matter of design choice.

Claims 1-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 5,538,495. Although the conflicting claims are not identical, they are not patentably distinct from each other because in order for one to provide the limitation set forth in claims 1,6,11,16 of the patent, the zones must be arranged in the manner set forth in the present claims. Furthermore, a change in size and shape is an obvious matter of design choice.

Claims 1-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 5,514,072. Although the conflicting claims are not identical, they are not patentably distinct from each other because in order for one to provide the limitation set forth in claim 1 of the patent, the zones must be arranged in the manner set forth in the present claims. Furthermore, a change in size and shape is an obvious matter of design choice.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth S. Smith whose telephone number is 571-272-4745. The examiner can normally be reached on M-F 7:30 AM-4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone numbers for the organization where this application or proceeding is assigned are (571) 273-8300 for regular communications and (571) 273-8300 for After Final communications.


Ruth S. Smith
Primary Examiner
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